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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,181	09/17/2003	Udo Schutz	PR-50	3957

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10/02/2007

EXAMINER

GROSSO, HARRY A

ART UNIT	PAPER NUMBER
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3781

MAIL DATE	DELIVERY MODE
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10/02/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/664,181
Filing Date: September 17, 2003
Appellant(s): SCHUTZ, UDO

MAILED

OCT 02 2007

Group 3700

Friedrich Kueffner
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 20, 2007 appealing from the Office action mailed December 18, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,050,437	SCHUTZ	4-2000
2002/0110658A1	LUCKE ET AL	8-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schutz (US 6050437) in view of DE 7341620. With respect to claim 1, Schutz discloses the following:

- a pallet-shaped support frame of metal or of an electrically conducting plastic material (Col 2, Lines 47-50);
- an exchangeable inner container of plastic material (polyethylene) supported on the support frame and having four sidewalls, a bottom, and a top (Col 2, Lines 40-47);
- wherein the inner container further comprises an upper closable fill socket (Fig. 1, item 5) and a lower outlet socket with a tapping fixture or an upper closable tapping socket (Fig. 1, item 7);
- an outer jacket surrounding the inner container and being comprised of grade bars of metal or sheet metal (Fig. 1, item 9);

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- wherein the inner container is a multi-layer body, comprising an exchangeable inner container of synthetic material and a lattice-like sheathing;
- wherein the inner container has integral electrically conducting sections comprised of an electrically conducting plastic material, wherein said conducting section extend across at least one of the sidewalls (Fig. 3 & 1, item 4).

However, Schutz fails to teach the electrically conducting plastic material with conducting sections being integral and also forming connections between an inner and outer surface of the inner container, and the conducting strips being the same thickness as the inner wall of the container. Nonetheless, DE 7341620 teaches a tank with electrically conducting plastic material wherein conducting strips are integral to the tank sidewalls, and form connections from the inside to the outside of the edge zones of the tank walls, so as to transfer internally generated static charge (See translated abstract), wherein the conducting material is molded into tank thus reducing extraneous labor costs associated with connecting a separate conducting strip, as well as simplifying design. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to replace the inner container and separate, all-encompassing conduction strip of Schutz with integrally formed conduction strips within the sidewalls of the inner container as taught by DE 7341620 so as to reduce labor costs, as well as provide design simplification. In addition, with respect to the conducting strip thickness, it would have been obvious to one having ordinary skill in the art at the time the invention was made to configure the conducting strip thickness as such since it has

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been held that discovering an optimum value of a result-effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272,205 USPQ 215 (CCPA 1980).

With respect to claim 3, Schutz, as modified above, discloses the electrically conducting strips, which are integrally molded in all of the walls of the inner container, having a vertical extension across at least one of the sidewalls and corner areas.

With respect to claim 5, Schutz as modified above discloses the conducting strips extending across the sidewalls, bottom and top of the inner container.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schutz in view of DE 7341620 and further in view of Lucke (US 2002/0110658 A1). Schutz, as modified above, discloses the claimed invention except for the inner container having an inner and outer layer, but Schutz, individually, does disclose a container with two physically separate layers, the outside layer being permanently antistatic. Nonetheless, Lucke teaches a composite tank that also utilizes the concept of conduction via wall material to mitigate internally generated static charge, wherein said tank comprises multiple layers (Fig. 9, [0068]), wherein having multiple layers improves strength of the container. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to configure the inner container of Schutz as modified by DE 7341620 to have multiple layers as taught by Lucke so as to improve structural characteristics of the inner container.

(10) Response to Argument

Rejection of Claims 1, 3, 5 under 35 U.S.C. 103(a), as being unpatentable over Schutz in view of DE 7341620

With regard to claim 1, appellant has correctly pointed out that the reference to Figures 3 & 1 and reference numeral 4 of Schutz in the rejection is incorrect, however, this does not materially affect the rejection. Appellant acknowledges that Schutz discloses the pallet shaped support frame, upper and lower sockets on the inner container and an outer jacket meeting the structural limitations of the claim. Appellant argues that Schutz does not teach an inner container that has a multilayer body. In response, Schutz discloses an inner container consisting of a plastic container (2 in Figure 1) with an outer sheathing (18) that consists of a lattice of thin wire mesh (column 2, lines 41-67). When combined with the plastic container, the outer sheathing becomes the outer layer of the inner container and is an integral part of the inner container.

Appellant argues that the inner container does not have electrically conducting plastic strips or sections extending across a sidewall that form a connection between an inner surface and an outer surface of the container. In response, the lattice sheathing provides electrically conducting sections (strips), the wires of the lattice, that extend across the sidewalls of the inner container. The sheathing forms a connection between an inner surface, the plastic layer of the container, and the outer surface of the inner container as defined by the outer surface of the sheathing. The outer surface of the plastic layer is an inner surface of the container and the language of the claim does not require the connection be to the inside surface of the inner container. Additionally, Schutz discloses the lattice can be made from electrically conductive synthetic material

(column 3, lines 1-5) and Schutz further identifies polyethylene as a synthetic material used for the inner container (column 2, lines 41-51).

Appellant argues that Schutz does not have electrically conducting strips matching a wall thickness of the inner container. In response, the electrically conducting strips or sections of the lattice have a thickness matching a wall thickness, the thickness of the sheathing layer being a wall thickness. The language of the claim does not require the conducting strips to have a thickness equal to the full thickness of the wall from the outside surface to the inside surface.

Appellant argues that the type and manner of grounding in DE 7341620 is completely different than that claimed in the invention. In response, DE 7341620 is used to teach the concept of integral conductive strips placed within the walls of the container during forming of the container walls to form a connection from an inner surface to an outer surface of the container. As seen in Figure 2, the conductive material, the grating or fleece (4-4a, 7) is integral with the container wall when formed and connects the inner surface to the outer surface. Appellant acknowledges this in his brief. Since the conducting strip of DE 7341620 goes from the inner surface to the outer surface it has a thickness matching a wall thickness of the container. Both Schutz and DE 7341620 deal with use of electrically conductive strips for grounding tanks. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a conducting strip integrally formed within the wall of the tank as disclosed by DE 7341620 in the inner container of Schutz to reduce costs and simplify assembly of the transport container.

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Regarding appellant's argument that the container structure and the type and manner of grounding in both Schutz and DE 7341620 are completely different from that of the instant invention, the container of Schutz and Schutz as modified by DE 7341620 meet the structural requirements of the claims as discussed herein. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,

Harry A. Grosso



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